

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs May 23, 2014

IN RE: DONNA E.W., ET AL.

**Direct Appeal from the Chancery Court for Lawrence County
No. 12-15854 Jim T. Hamilton, Chancellor**

No. M2013-02856-COA-R3-PT - Filed June 24, 2014

The trial court terminated Mother's parental rights on the grounds of abandonment for failure to support, persistence of conditions, and failure to substantially comply with the permanency plans. On appeal, Mother asserts that the trial court erred in determining that termination of her parental rights was in the children's best interest. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed
and Remanded**

DAVID R. FARMER, J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J., joined.

Michael Wallace Coleman, Jr., Lawrenceburg, Tennessee, for the appellant, Mother.

Robert E. Cooper, Jr., Attorney General and Reporter, Paul Jordan Scott, Assistant Attorney General and Mary Byrd Ferrara, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children's Services.

Teresa Powers Martin, Guardian ad Litem.

MEMORANDUM OPINION¹

¹Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

This appeal arises from a September 26, 2013, order of the Chancery Court of Lawrence County terminating Mother's parental rights to her minor children, Donna E.W. (born January 2013) and Mekiala S.W. (born August 2006), who have been in the custody of the Department of Children's Services ("DCS") since February 2011. Mother stipulated to the facts and stipulated at trial that she agreed to termination of her parental rights. The trial court terminated Mother's parental rights on the grounds of abandonment for failure to support, failure to comply with the permanency plans, and persistence of conditions leading to the removal of the children from Mother's custody. The trial court further found that termination of Mother's parental rights was in the children's best interests.

In October 2013, Mother filed a motion to alter or amend the judgment and/or for a new trial on the basis that she "no longer desire[d] to stipulate to the[] facts and findings." Following a hearing on November 5, 2013, the trial court denied Mother's motion by order entered November 25, 2013. Mother filed a timely notice of appeal to this Court.

Issue Presented

Mother presents the following issue for our review:

Whether clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights was in the children's best interests.

Standard of Review

We review findings of facts of a trial court sitting without a jury *de novo* upon the record with a presumption of correctness unless the preponderance of the evidence is otherwise. *In Re Angela E.*, 303 S.W.3d 240, 246 (Tenn.2010) (citation omitted); Tenn. R. App. P. 13(d). Insofar as a factual finding is based on the trial court's assessment of witness credibility, we will not reverse that finding absent clear and convincing evidence to the contrary. *In Re: M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App.2005). No presumption of correctness attaches, however, to a trial court's conclusions on issues of law. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000); Tenn. R. App. P. 13(d). A trial court's conclusion regarding whether the facts of the case support a statutory ground for termination of parental rights is a question of law that we review *de novo* with no presumption of correctness. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007) (citation omitted).

Tennessee Code Annotated § 36-1-113 governs the termination of parental rights. The Code provides, in pertinent part:

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

Tenn. Code Ann. § 36-1-113(c)(2010). Accordingly, every termination case requires the court to determine whether the parent has engaged in a course of action or inaction that constitutes one of the statutory grounds for termination. A parent may not be deprived of their fundamental right to the custody and control of their child unless clear and convincing evidence supports a finding that a statutory ground for termination exists and that termination is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c)(2010). The "clear and convincing evidence" standard is more exacting than the "preponderance of the evidence" standard, but does not require the certainty demanded by the "beyond a reasonable doubt" standard. *In Re: M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App.2005). Clear and convincing evidence is evidence that eliminates any substantial doubt and that produces in the fact-finder's mind a firm conviction as to the truth. *Id.*

This heightened burden of proof in parental termination cases requires us to distinguish between the trial court's findings with respect to specific facts and the "combined weight of these facts." *In Re: Michael C. M.*, No. W2010-01511-COA-R3-PT, 2010 WL 4366070, at *2 (Tenn. Ct. App. Nov. 5, 2010) (*no perm. app. filed*) (quoting *In Re: M.J.B.*, 140 S.W.3d 643, 654 n. 35 (Tenn. Ct. App.2004)). Although we presume the trial court's specific findings of fact to be correct if they are supported by a preponderance of the evidence, we "must then determine whether the combined weight of these facts provides clear and convincing evidence supporting the trial court's ultimate factual conclusion." *Id.* With this standard of review in mind, we turn to whether the trial court erred by determining that termination of Mother's parental rights was in the best interests of the children.

Discussion

Tennessee Code Annotated § 36-1-113(i)(Supp. 2013) states:

In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting

adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

In this case, the children and their older sister, Cassandra B.M. were adjudicated dependent and neglected in March 2011 and have been in State custody since January 2011.² In its September 2013 order, the trial court found that Mother stipulated that she had been employed since December 2011 but failed to pay child support as ordered; that Mother was aware of and had been advised of her child support obligations; that Mother failed to comply with the permanency plan where she had not obtained sufficient housing and was "essentially . . . homeless, living with friends from work, in motels, and in a storage unit[;]" that Mother inconsistently took medications prescribed for mental health disorders; that the Children were removed from Mother's home after sexual abuse by Mother's boyfriend and at least one other adult male and that, since being placed in DCS custody, the children stated that several men had inappropriately touched them when they visited with Mother; and that the children told the Foster Care Review Board that they did not want to return to Mother's custody. The trial court determined that the conditions leading to the children's removal were not likely to be

²Cassandra was 19 years of age at the time of trial and has therefore "aged out" of State custody.

remedied despite efforts by DCS to provide services to Mother through Lifecare and Youth Villages, to make the children available for visitation, to offer Mother appropriate financial assistance, and to assist Mother to complete housing applications. The trial court further found that, although Mother was homeless at the time of trial, persons who previously had resided with Mother had “shown physical, sexual, emotional, or psychological abuse or neglect toward the children.” The trial court also found that Mother’s mental health and emotional status would be detrimental to her ability to supervise and care for the children and to provide a safe and secure environment for them. The trial court found that the children had established a strong bond with their foster parents, who wished to adopt the children.

Although Mother moved to withdraw her stipulation of facts after entry of the trial courts’ September 2013 judgment, Mother does not challenge these facts, does not appeal the finding of grounds for termination, and does not assert that the trial court erred by denying her motion to alter or amend. Further, Mother does not reference anything in the record that would contradict the facts contained in the trial court’s judgment. Upon review of the record, we affirm the trial court’s determination that termination of Mother’s parental rights is in the children’s best interest.

Holding

In light of the foregoing, we affirm the trial court’s judgment terminating Mother’s parental rights. Costs on appeal are taxed to the Appellant. This matter is remanded to the trial court for enforcement of the judgment and the collection of costs.

DAVID R. FARMER, JUDGE